
ALTERNATIVES TO REMOVAL

Legal Overview of Alternatives to Removal

Texas Family Code

Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 261. Investigation of Report of Child Abuse or Neglect

The primary purpose of a Child Protective Services (CPS) investigation is to protect the child. CPS investigations are civil in nature and include an evaluation of the child's immediate safety and an assessment of future risk of abuse or neglect.

A. Initiation of Investigations

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I. Child Safety Check Alert List

A. Initiation of Investigations

Initiation of an investigation requires:

1. Abuse or Neglect or the Risk of Abuse or Neglect

"Abuse" includes the following acts or omissions by a person:

- Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

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- Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
 - Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
 - Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of a young child or children under [Tex. Penal Code § 21.02](#), indecency with a child under [Tex. Penal Code § 21.11](#), sexual assault under [Tex. Penal Code § 22.011](#), or aggravated sexual assault under [Tex. Penal Code § 22.021](#);
 - Failure to make a reasonable effort to prevent sexual conduct harmful to a child;
 - Compelling or encouraging the child to engage in sexual conduct as defined by [Tex. Penal Code § 43.01](#), including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under [Tex. Penal Code § 20A.02\(a\)\(7\)](#) or [Tex. Penal Code § 20A.02\(a\)\(8\)](#), prostitution under [Tex. Penal Code § 43.02\(b\)](#), or compelling prostitution under [Tex. Penal Code § 43.05\(a\)\(2\)](#);
 - Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by [Tex. Penal Code § 43.21](#) or pornographic;
 - The current use by a person of a controlled substance as defined by [Tex. Health and Safety Code Chapter 481](#), in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
 - Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by [Tex. Health and Safety Code Chapter 481](#);
 - Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by [Tex. Penal Code § 43.25](#); or
 - Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under [Tex. Penal Code § 20A.02\(a\)\(5\), \(6\), \(7\) or \(8\)](#), or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections. [Tex. Fam. Code § 261.001\(1\)](#).

"Neglect" includes:

- The leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and the demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;
- The following acts or omissions by a person:
 - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
 - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
 - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services have been offered and refused;
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
 - placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under [Tex. Fam. Code § 261.001 \(1\)\(E\), \(F\), \(G\), \(H\), or \(K\)](#) committed against another child; or
- The failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away. [Tex. Fam. Code § 261.001\(4\)](#).

Neglect does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of DFPS if:

- The child has a severe emotional disturbance;
- The person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and

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- The person has exhausted all reasonable means available to the person to obtain the mental health services described by [Tex. Fam. Code § 261.001\(4\)\(B\)\(ii\)](#). [Tex. Fam. Code § 261.001\(4\)](#).

The DFPS Commissioner shall adopt rules to prohibit DFPS from making a finding of abuse or neglect against a person in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)\(1\)](#).

The refusal of a parent, guardian, or managing or possessory conservator of a child to administer or consent to the administration of a psychotropic medication to the child, or to consent to any other psychiatric or psychological treatment of the child, does not by itself constitute neglect of the child unless the refusal to consent:

- Presents a substantial risk of death, disfigurement, or bodily injury to the child; or
- Has resulted in an observable and material impairment to the growth, development, or functioning of the child. [Tex. Fam. Code § 261.111\(b\)](#).

2. By a Person Responsible for a Child's Care, Custody, or Welfare

- A parent, guardian, managing or possessory conservator, or foster parent of the child;
- A member of the child's family or household as defined by [Tex. Fam. Code Chapter 71](#);
- A person with whom the child's parent cohabits;
- School personnel or a volunteer at the child's school; or
- Personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential facility where the child resides. [Tex. Fam. Code § 261.001\(5\)](#).

B. Making a Report

DFPS sets out the mandatory requirements for an investigation in [CPS Handbook § 2200](#), located at http://www.dfps.state.tx.us/handbooks/CPS/Files/CPS_pg_2200.asp.

1. Call to the Hotline

An investigation of child abuse or neglect usually starts with a call to the hotline. The reporter may identify himself or remain anonymous, but the identity of the reporter is confidential. [Tex. Fam. Code § 261.201\(a\)\(1\)](#). However, a court may order disclosure of

the identity of the reporter or the information obtained through the investigation. [Tex. Fam. Code § 261.201\(b\)](#).

2. Lay Person's Duty to Report

Any person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report. [Tex. Fam. Code § 261.101\(a\)](#).

In addition to the duty to report pursuant to [Tex. Fam. Code § 261.101\(a\)](#), a person must also report if the person has cause to believe that an adult was a victim of abuse or neglect as a child and the person determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

3. Professional's Duty to Report

If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, the professional shall make a report no later than the 48th hour after the professional first suspects that the child has been abused or neglected. [Tex. Fam. Code § 261.101\(b\)](#).

A professional may not delegate to or rely on another person to make the report. [Tex. Fam. Code § 261.101\(b\)](#).

A professional who has the duty to report under [Tex. Fam. Code § 261.101\(a\)](#) or [Tex. Fam. Code § 261.101\(b\)](#), must also report if the professional has cause to believe that an adult was a victim of abuse or neglect as a child and the professional determines in good faith that the disclosure of the information is necessary to protect the health and safety of another child. [Tex. Fam. Code § 261.101\(b-1\)](#).

The requirement to report under [Tex. Fam. Code § 261.101](#) applies without exception to an individual whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, a mental health professional, an employee or member of a board that licenses or certifies a professional, and an employee of a clinic or health care facility that provides reproductive services. [Tex. Fam. Code § 261.101\(c\)](#).

4. Failure to Report

A person commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(a\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a\)](#).

Failure to report when required is punishable as a Class A misdemeanor, except that the offense is a state jail felony if the child was a person with an intellectual disability who resided in a state supported living center or a facility licensed under [Tex. Health and](#)

[Safety Code Chapter 252](#) and the actor knew the child suffered serious bodily injury. [Tex. Fam. Code § 261.109\(b\)](#).

A professional as defined by [Tex. Fam. Code § 261.101\(b\)](#) commits an offense if the person is required to make a report under [Tex. Fam. Code § 261.101\(b\)](#) and knowingly fails to make a report. [Tex. Fam. Code § 261.109\(a-1\)](#).

An offense under [Tex. Fam. Code § 261.109\(a-1\)](#) is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the actor intended to conceal the abuse or neglect. [Tex. Fam. Code § 261.109\(c\)](#).

5. Immunities

A person acting in good faith who reports or assists in an investigation is immune from civil or criminal liability that might otherwise be imposed. [Tex. Fam. Code § 261.106\(a\)](#).

6. False Reports

Knowingly making a false report is punishable as a state jail felony, unless it is shown that the person has previously been convicted under this section, in which case the offense is a third-degree felony and carries a civil penalty of \$1,000. [Tex. Fam. Code § 261.107\(a\)](#) and [Tex. Fam. Code § 261.107\(e\)](#).

C. Fourth Amendment Requirements in an Investigation

For any investigative action that involves entering or remaining in a home, transporting a child for an interview, or removing a child from a parent's custody, DFPS must have consent, a court order, or exigent circumstances per *Gates v. Tex. Dep't of Protective & Regulatory Servs.*, [537 F.3d 404](#) (5th Cir. 2008).

1. Consent

An evaluation of consent is based on the totality of the circumstances and under a standard of objective reasonableness. Silence or passivity cannot form the basis of consent to enter. Also, mere acquiescence to a show of lawful authority is insufficient to establish voluntary consent. Once consent is given, the consent may be limited, qualified, or withdrawn. *Gates*, [537 F.3d at 420](#).

2. Court Order

If a caseworker cannot gain consent, they may seek a court order to allow entrance for an interview, examination, or investigation. [Tex. Fam. Code § 261.303\(b\)](#).

3. Exigent Circumstances

If there is not time to gain a court order, however, DFPS can still enter or remain in a home, even absent consent, if there are exigent circumstances. Under this standard,

there must be a reasonable cause to believe that the child is in immediate danger. Entering or remaining in the home for the sole purpose of interviewing the child does not suffice. *Gates*, 537 F.3d at 421-23.

4. Anonymous Tip

An anonymous tip, absent some showing that it is reliable, is not enough to justify removal for an interview. Instead, the tip must be corroborated through a preliminary investigation that can include an interview of the child's teachers or peers, an interview of the child at the school, or by looking for injuries on the child without removing any of the child's clothing. In determining whether to take the child to another location for the interview, the caseworker should take into account the child's wishes. *Gates*, 537 F.3d at 424. A person who is notified of and attempts to interfere with the transportation can be charged with a Class B misdemeanor. [Tex. Fam. Code § 261.302\(f\)](#).

5. Taking Child Into Separate Room for an Interview

Like a *Terry* stop [*Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)], all that is required is a reasonable suspicion of abuse or neglect so long as the interview is no more intrusive than necessary. *Gates*, 537 F.3d at 434.

6. Transporting a Child from School to Another Location for an Interview

Before transporting a child for an interview, DFPS must first attempt to notify the parent or other person having custody of the child. *Gates*, 537 F.3d at 429. Absent consent to transport, DFPS may obtain a court order. Although there is currently no express statutory provision authorizing such an order, [Tex. Fam. Code § 261.303](#) may be applicable. According to the holding in *Gates*, in order to transport a child from a public school for an interview absent a court order or consent, a caseworker must have a reasonable belief that the child has been abused and probably will be abused again upon his return home at the end of the school day. *Gates*, 537 F.3d at 439.

D. Orders in Aid of Investigation

1. Interference

A person may not interfere with a DFPS investigation of a report of child abuse or neglect. [Tex. Fam. Code § 261.303\(a\)](#).

The court may also prohibit the removal of the child from the state during an investigation if the court:

- Finds that DFPS has probable cause to conduct the investigation; and
- Has reason to believe that the person may remove the child from the state. [Tex. Fam. Code § 261.306\(b\)](#).

Contumacious refusal to submit to orders in aid of investigation may be grounds for termination of parental rights in a subsequently filed suit affecting the parent-child relationship. [Tex. Fam. Code § 161.001\(b\)\(1\)\(I\)](#).

2. Court Orders

If DFPS requests the information below, but is not allowed access, then the court having family law jurisdiction and for good cause shall order:

- Admission to the home, school, or place where a child may be for the interview, examination, and investigation, [Tex. Fam. Code § 261.303\(b\)](#);
- A child's physical, psychological, or psychiatric examination or the release of related medical records, [Tex. Fam. Code § 261.303\(c\)](#); or
- A parent or caregiver's medical or mental examination of and/or access to related records. [Tex. Fam. Code § 261.305\(b\)](#).

If the court determines that the parent or person is indigent, then the court shall appoint an attorney at the hearing relating to the examination or release of medical records under this section. [Tex. Fam. Code § 261.305\(c\)](#).

Special Issue: Although not required by statute, some courts require an affidavit to support a motion for an order in aid of investigation. Courts might also require the making of a record, if DFPS requests an order in aid of investigation without an affidavit or a motion for the order.

Courts might consider the following when requested to issue an order in aid of investigation:

- Jurisdiction is proper in the court because the child is located in the jurisdiction of the court or the court has continuing jurisdiction.
- DFPS has filed an application seeking an order in aid of investigation and has shown good cause for a court order because:
 - DFPS cannot access the child;
 - DFPS cannot obtain medical, psychiatric, or psychological records of the child;
 - DFPS cannot obtain consent by the parent or caregiver of the child for a medical, psychological, or psychiatric examination; or
 - the parent or caregiver refuses to cooperate with the investigation and refusal poses a risk to the child's safety.

E. Order Seeking Removal of Alleged Perpetrator of Physical or Sexual Abuse

Without asking for removal of the child, DFPS may file a petition for removal of the alleged perpetrator of child abuse from the household. [Tex. Fam. Code § 262.1015\(a\)](#).

DFPS can also:

- File for a protective order on behalf of the child instead of or in addition to obtaining a temporary restraining order; or
- Assist a parent or other adult with whom a child resides in obtaining a protective order. [Tex. Fam. Code § 262.1015\(a-1\)](#).

1. Court Orders

The court may order:

- Removal of the alleged perpetrator; and
- The remaining parent to make a reasonable effort to monitor the residence and report any attempt of the alleged perpetrator to return to the residence. [Tex. Fam. Code § 262.1015\(e\)](#).

2. Expiration of the Temporary Restraining Order

The order remains in effect for up to 14 days, unless the court grants an extension under [Tex. Fam. Code § 262.201\(a-3\)](#). [Tex. Fam. Code § 262.1015\(d\)](#).

3. Violation of Temporary Restraining Order

It is a Class A misdemeanor if either parent violates the order; if a parent has been previously convicted of the same offense, it is a third degree felony. [Tex. Fam. Code § 262.1015\(h\)](#).

4. Child With Sexually Transmitted Disease

DFPS must take additional steps if the investigation reveals that a child younger than 11 has a sexually transmitted disease. DFPS must appoint a special investigator to assist in the investigation of the case and that investigator must follow [Tex. Fam. Code § 262.010](#), including coordinating with law enforcement. [Tex. Fam. Code § 262.010](#).

F. Order for Required Participation

On request of DFPS, the court may require participation in services provided by DFPS.

1. Who May Be Ordered to Participate

- Parent;
- Guardian;
- Managing conservator; or
- Other member of child's household. [Tex. Fam. Code § 263.203](#).

2. Court May Order

Participation in the services DFPS provides or purchases to:

- Alleviate the effects of the abuse or neglect that has occurred;
- Reduce the reasonable likelihood that the child may be abused or neglected in the immediate or foreseeable future; and
- Permit the child and any siblings of the child to receive the services. [Tex. Fam. Code § 264.203\(a\)](#).

Such participation may be ordered whether the child resides in the home or has been removed from the home. [Tex. Fam. Code § 264.203\(b\)](#).

3. Failure to Comply

If the person ordered to participate in the services fails to follow the court's order, the court may impose appropriate sanctions in order to protect the health and safety of the child, including removal of the child. [Tex. Fam. Code § 264.203\(c\)](#).

4. If NOT Ordering Participation, Court Shall Specify Reasons in Writing

If the court does not order the person to participate, the court in writing shall specify the reasons for not ordering participation. [Tex. Fam. Code § 264.203\(d\)](#).

G. Protective Orders

DFPS is specifically authorized to file an application for a protective order. [Tex. Fam. Code § 82.002\(d\)\(2\)](#).

1. Temporary Ex Parte Protective Order

A temporary ex parte protective order can be used to:

- Direct a respondent to do or refrain from doing certain acts. [Tex. Fam. Code § 83.001\(b\)](#).

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- Exclude a perpetrator from a residence under certain situations. [Tex. Fam. Code § 83.006](#).

The order is effective for up to 20 days. [Tex. Fam. Code § 83.002\(a\)](#). On an applicant's request or on the court's own order, the 20-day period may be extended for additional 20-day periods. [Tex. Fam. Code § 83.002\(b\)](#).

A temporary ex parte protective order may be issued without notice or hearing, but the court has the option to recess the hearing to contact the respondent by phone and provide the respondent with an opportunity to be present for the hearing. If the court chooses to recess to allow the respondent an opportunity to be present, the hearing must resume that same day without regard to the respondent's availability. [Tex. Fam. Code § 83.006\(c\)](#).

A temporary ex parte protective order can be enforced through a civil contempt proceeding, and certain provisions can be criminally enforced. [Tex. Fam. Code § 85.021](#); [Tex. Fam. Code § 85.022](#); and [Tex. Penal Code § 25.07\(a\)](#).

During the time a temporary ex parte protective order is in existence, it supersedes any other order under [Tex. Fam. Code Title 5](#) to the extent there is a conflict. [Tex. Fam. Code § 83.005](#).

2. Protective Order

Protective orders may be issued by a court if the court finds that family violence has occurred and is likely to occur in the future. [Tex. Fam. Code § 85.001](#).

A prosecuting attorney may not be precluded from representing a party in a proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) and DFPS in another action involving the party, regardless of whether the proceeding under [Tex. Fam. Code Title 4, Subtitle B](#) occurs before, concurrently with, or after the other action involving the party. [Tex. Fam. Code § 81.0075](#).

An application for a protective order may be filed in:

- The county in which the applicant resides;
- The county in which the respondent resides; or
- Any county in which the family violence is alleged to have occurred. [Tex. Fam. Code § 82.003](#).

In a protective order, the court may, among other things:

- Prohibit a party from removing a child who is a member of the family or household from the possession of a person named in the order, or the jurisdiction of the court, [Tex. Fam. Code § 85.021\(1\)\(A\)\(i\)-\(ii\)](#);

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- Order the person found to have committed family violence to perform acts specified by the court that the court determines are necessary or appropriate to prevent or reduce the likelihood of family violence, including completion of a battering intervention and prevention program, [Tex. Fam. Code § 85.022\(a\)](#);
 - Prohibit the person found to have committed family violence from:
 - committing family violence;
 - communicating:
 - directly with a person protected by an order or a member of the family or household of a person protected by an order, in a threatening or harassing manner;
 - a threat through any person to a person protected by an order or a member of the family or household of a person protected by an order; and
 - if the court finds good cause, in any manner with a person protected by an order or a member of the family or household of a person protected by an order, except through the party's attorney or a person appointed by the court;
 - going to or near the residence or place of employment or business of a person protected by an order or a member of the family or household of a person protected by an order;
 - going to or near the residence, child-care facility, or school a child protected under the order normally attends or in which the child normally resides;
 - engaging in conduct directed specifically toward a person who is a person protected by an order or a member of the family or household of a person protected by an order, including following the person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass the person; and
 - possessing a firearm, unless the person is a peace officer, actively engaged in employment as a sworn, full-time paid employee of a state agency or political subdivision. [Tex. Fam. Code § 85.022\(b\)](#).

There is a presumption that family violence has occurred and is likely to occur in the future if:

- The respondent has been convicted of or placed on deferred adjudication community supervision for any of the following offenses against the child for whom the petition is filed:

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- an offense under [Tex. Penal Code Title 5](#), for which the court has made an affirmative finding that the offense involved family violence under [Tex. Crim. Proc. Code Art. 42.013](#); or
 - an offense under [Tex. Penal Code Title 6](#).
 - The respondent's parental rights with respect to the child have been terminated; and
 - The respondent is seeking or attempting to seek contact with the child. [Tex. Fam. Code § 81.0015](#).

A protective order issued pursuant [Tex. Fam. Code, Title 4, Subtitle B](#) is effective for a period stated in the order, not to exceed two years; or if a period is not stated in the order, until the second anniversary of the date the order was issued. [Tex. Fam. Code § 85.025\(a\)](#). A court may render a protective order sufficient to protect the applicant and members of the applicant's family or household that is effective for a period that exceeds two years if the court makes specific findings pursuant to [Tex. Fam. Code § 85.025\(a-1\)](#).

If a person who is subject of a protective order is confined or imprisoned on the date the protective order would expire under [Tex. Fam. Code § 85.025\(a\)](#) or [Tex. Fam. Code § 85.025\(a-1\)](#), or if the protective order would expire not later than the first anniversary of the date the person is released from confinement or imprisonment, the period for which the order is effective is extended, and the order expires on:

- The first anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for more than five years; or
- The second anniversary of the date the person is released from confinement or imprisonment, if the person was sentenced to confinement or imprisonment for five years or less. [Tex. Fam. Code § 85.025\(c\)](#).

Each protective order issued under [Tex. Fam. Code § 85.026\(a\)](#), including a temporary ex parte order, must contain the following:

"A PERSON WHO VIOLATES THIS ORDER MAY BE PUNISHED FOR CONTEMPT OF COURT BY A FINE OF AS MUCH AS \$500 OR BY CONFINEMENT IN JAIL FOR AS LONG AS SIX MONTHS, OR BOTH."

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

"IT IS UNLAWFUL FOR ANY PERSON, OTHER THAN A PEACE OFFICER, AS DEFINED BY [TEX. PENAL CODE § 1.07](#), ACTIVELY ENGAGED IN EMPLOYMENT AS A SWORN, FULL-TIME PAID EMPLOYEE OF A STATE AGENCY OR POLITICAL SUBDIVISION, WHO IS SUBJECT TO A PROTECTIVE ORDER, TO POSSESS A FIREARM OR AMMUNITION."

"A VIOLATION OF THIS ORDER BY COMMISSION OF AN ACT PROHIBITED BY THE ORDER MAY BE PUNISHABLE BY A FINE OF AS MUCH AS \$4,000 OR BY CONFINEMENT IN JAIL FOR AS LONG AS ONE YEAR, OR BOTH. AN ACT THAT RESULTS IN FAMILY VIOLENCE MAY BE PROSECUTED AS A SEPARATE MISDEMEANOR OR FELONY OFFENSE. IF THE ACT IS PROSECUTED AS A SEPARATE FELONY OFFENSE, IT IS PUNISHABLE BY CONFINEMENT IN PRISON FOR AT LEAST TWO YEARS."

Each protective order issued under [Tex. Fam. Code § 85.026\(c\)](#), including a temporary ex parte order must contain the following:

"NO PERSON, INCLUDING A PERSON WHO IS PROTECTED BY THIS ORDER, MAY GIVE PERMISSION TO ANYONE TO IGNORE OR VIOLATE ANY PROVISION OF THIS ORDER. DURING THE TIME IN WHICH THIS ORDER IS VALID, EVERY PROVISION OF THIS ORDER IS IN FULL FORCE AND EFFECT UNLESS A COURT CHANGES THE ORDER."

Each protective order must be:

- Served on the respondent, [Tex. Fam. Code § 85.041](#); and
- Delivered to law enforcement and the child's child care or school, as applicable, [Tex. Fam. Code § 85.042](#).

If a final protective order is rendered by a court other than the court in which a suit affecting the parent-child relationship is pending, the clerk of the court that rendered the final protective order shall:

- Inform the clerk of the court that a final order has been rendered; and
- Forward a copy of the final protective order to the court in which the suit is pending. [Tex. Fam. Code § 85.062\(c\)](#).

A protective order rendered by a court may be transferred to the court having jurisdiction over the suit affecting the parent-child relationship or of continuing, exclusive jurisdiction. [Tex. Fam. Code § 85.064](#).

If a suit affecting the parent-child relationship is pending, a party to the suit may apply for a protective order against another party to the suit by filing an application in the court

within which the suit is pending, or in the court within the county in which the applicant resides if the applicant resides outside the jurisdiction of the court in which the suit is pending. [Tex. Fam. Code § 85.062\(a\)](#).

An applicant for a protective order or an attorney representing an applicant may not be assessed any type of fee by a district or county clerk of the court or a sheriff, constable, or other public official or employee for the filing, serving, or entering of a protective order or for any other service. [Tex. Fam. Code § 81.002](#).

3. Temporary Restraining Order

A temporary restraining order is not criminally enforceable like temporary ex parte protective orders and protective orders, both of which are designed to protect people and provide a greater level of protection than temporary restraining orders.

4. Texas Family Violence Bench Book

The Texas Office of Court Administration produced a reference manual in 2011 devoted entirely to the law on family violence in Texas. The Texas Family Violence Bench Book is available at: <http://www.txcourts.gov/media/478288/domesticviolencebenchbook.pdf>

2013 chapter updates to the Texas Family Violence Bench Book are available at: <http://www.txcourts.gov/publications-training/judicial-ethics-bench-books/judicial-bench-books.aspx>

H. Relinquishing Custody of Child to Obtain Certain Services

During the last two legislative sessions, several changes were made to the Texas Family Code regarding circumstances in which a parent relinquishes custody of a child in order for the child to receive mental health services.

The Texas Family Code now requires DFPS to make rules that prohibit the agency from making a finding of abuse or neglect against a parent in a case in which DFPS is named managing conservator of a child who has a severe emotional disturbance only because the child's family is unable to obtain mental health services for the child. [Tex. Fam. Code § 261.002\(b\)](#).

1. Severe Emotional Disturbance Defined

A subsection was added to [Tex. Fam. Code § 261.001](#) to define "severe emotional disturbance" as a "mental, behavioral, or emotional disorder of sufficient duration to result in functional impairment that substantially interferes with or limits a person's role or ability to function in family, school, or community activities." [Tex. Fam. Code § 261.001\(9\)](#).

2. Option of Joint Managing Conservatorship Between Parent and DFPS

Before DFPS files a suit affecting the parent-child relationship requesting managing conservatorship of a child who suffers from a severe emotional disturbance to obtain mental health services for the child, DFPS must, unless it is not in the best interest of the child, discuss with the child's parent or legal guardian the option of seeking a court order for joint managing conservatorship of the child with DFPS. [Tex. Fam. Code § 262.352](#).

I. Child Safety Check Alert List

If at any time during an investigation of a report of child abuse or neglect to which DFPS has assigned the highest priority DFPS is unable to locate the child who is the subject of the report of abuse or neglect or the child's family, DFPS shall notify the Department of Public Safety (DPS) that the location of the child and the child's family is unknown. If DPS locates the child and the child's family, DPS shall notify DFPS of the location of the child and the child's family. [Tex. Fam. Code § 261.301\(i\)](#).

DPS shall maintain a child safety check alert list as part of the Texas Crime Information Center (TCIC) to help locate a child or the child's family for purposes of:

- Investigating a report of child abuse or neglect;
- Providing protective services to a family receiving family-based support services; or
- Providing protective services to the family of a child in the managing conservatorship of DFPS. [Tex. Fam. Code § 261.3022\(a\)](#).

If DFPS is unable to locate a child or the child's family for a purpose described in [Tex. Fam. Code § 261.3022\(a\)](#) after DFPS has attempted to locate the child for not more than 20 days, DFPS shall notify DPS that DFPS is unable to locate the child or the child's family. The notice must include the information required by [Tex. Fam. Code § 261.3022\(c\)\(1\)-\(10\)](#). [Tex. Fam. Code § 261.3022\(b\)](#).

On receipt of notice from DFPS, DPS shall notify TCIC to place the child and the child's family on a child safety check alert list. The alert list must include the following information if known or readily available:

- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the family member alleged to have abused or neglected a child according to the report DFPS is attempting to investigate;
- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of any parent, managing conservator, or guardian of the child who cannot be located for the purposes described by [Tex. Fam. Code § 261.3022\(a\)](#);

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- The name, sex, race, date of birth, any known identifying numbers, including social security number and driver's license number, and personal descriptions of the child who is the subject of the report or is receiving services described by [Tex. Fam. Code § 261.3022\(a\)\(2\)](#) or [Tex. Fam. Code § 261.3022\(a\)\(3\)](#);
 - If applicable, a code identifying the type of child abuse or neglect alleged or determined to have been committed against the child;
 - The family's last known address;
 - Any known description of the motor vehicle, including the vehicle's make, color, style of body, model year, and vehicle identification number, in which the child is suspected to be transported;
 - The case number assigned by DFPS;
 - The DFPS dedicated law-enforcement telephone number for statewide intake;
 - The date and time when and the location where the child was last seen; and
 - Any other information required for entry as established by TCIC. [Tex. Fam. Code § 261.3022\(c\)](#).

On receipt of notice that a child has been located, TCIC shall remove the child and the child's family from the child safety check alert list. [Tex. Fam. Code § 261.3024\(c\)](#).

The 84th Texas Legislature passed two different bills affecting the child safety check alert list. All changes will be reflected in the statutes when published. Here are the applicable changes:

- If law enforcement encounters a child or other person listed on the TCIC child safety check alert list, the law enforcement officer shall follow the procedures described by the [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3023](#).
 - if a peace officer locates a child or other person listed on the TCIC child safety alert list established under [Tex. Fam. Code § 261.3022](#), the officer shall:
 - immediately contact DFPS on the dedicated law enforcement telephone number for statewide intake;
 - request information from DFPS regarding the circumstances of the case involving the child or other person; and
 - request information from the child and the other person regarding the child's safety, well-being, and current residence. [Tex. Crim. Proc. Code Art. 2.272\(a\)](#).
 - the peace officer may temporarily detain the child or other person to ensure the safety and well-being of the child. [Tex. Crim. Proc. Code Art. 2.272\(b\)](#).

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- if the peace officer determines that the circumstances described by [Tex. Fam. Code § 261.204](#) exist, the officer may take temporary possession of the child without a court order as provided by [Tex. Fam. Code § 261.204](#). If the peace officer does not take possession of the child, the officer shall obtain the child's current address and any other relevant information and report that information to DFPS. [Tex. Crim. Proc. Code Art. 2.272\(c\)](#).
 - a peace officer who locates a child or other person listed on the TCIC child safety check alert list and who reports the child's or other person's current address and other relevant information to DFPS shall report to TCIC that the child or other person has been located and to whom the child was released, as applicable. [Tex. Crim. Proc. Code Art. 2.272\(d\)](#).
 - If law enforcement encounters a person, including a child, listed on the TCIC child safety check alert list, the officer shall request information from the person or the child regarding the child's well-being and current residence. [Tex. Fam. Code § 261.3023\(a\)](#).
 - A law enforcement officer who locates a child listed on the TCIC child safety check alert list shall report that the child has been located in the manner prescribed by [Tex. Crim. Proc. Code Art. 2.272](#). [Tex. Fam. Code § 261.3024\(a\)](#).
 - A law enforcement officer who locates a child listed on the TCIC child safety check alert list and who reports the child's current address and other relevant information to DFPS under [Tex. Fam. Code § 261.3023](#) shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(a\)](#).
 - If DPS locates a child who has been placed on the child safety check alert list established under [Tex. Fam. Code § 261.3022](#) through a means other than information reported to DPS by a law enforcement officer under [Tex. Crim. Proc. Code Art. 2.272](#), DPS shall report to TCIC that the child has been located. [Tex. Fam. Code § 261.3024\(b\)](#).